IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FAMILY COURT APPEAL NO. 8 OF 2006

JOHN DESMOND .. APPELLANT

Versus

FRANCA FERNANDES .. RESPONDENT

Mr. J.P.Shah for appellant
Ms. Sandhya Sharma for respondent

CORAM:-SMT. RANJANA DESAI &

SMT. V.K. TAHILRAMANI, JJ.

DATED:- 20/9/2006

P.C.

1. The appellant has challenged in this Family Court Appeal Order dated 8/8/2005 passed by the Family Court at Bandra, Mumbai, whereby the respondent mother was given permanent custody of minor child Joanne and order dated 3/12/2005 passed by the same court directing the police to provide assistance to the respondent for getting the custody of the minor daughter Joanne from the appellant.

2. The learned counsel for the appellant states that on 12/6/06 the appellant and the respondent filed consent terms before the Counsellor in the

Family Court and the Counsellor directed the parties to file affidavits. Accordingly, the parties filed affidavits on 18/7/06 in the Family Court. The Family Court by order dated 18/7/06 converted the petition for divorce filed by the respondent under section 19 of the Indian Divorce Act, 1869 into petition for divorce by mutual consent under section 10 (A) of the Indian Divorce Act, 1869 and ordered that the marriage between the appellant and the respondent stands dissolved by decree of divorce by mutual consent under section 10(A) of the Indian Divorce Act, 1869. A copy of the judgment and decree of the Family Court dated 18/7/06 is on record.

3. The learned counsel for the appellant states that, as per the consent terms access to child Joanne is being given by the appellant to the respondent. It is submitted that both the appellant and the respondent have filed affidavits in the Family Court at Bandra, Mumbai, stating that in view of the consent terms application will be made for appropriate order for the disposal of the present appeal in this court. He further submitted that the Family Court has expressly made consent terms part of the decree. He further stated that,

in view of the fact that the marriage between the appellant and the respondent stands dissolved and that the permanent custody of the minor child Joanne is directed to be handed over to the appellant with access to the respondent, the present Family Court Appeal deserves to be disposed of. He submitted that the respondent has been served.

4. Though the respondent has been served the respondent has not cared to appear. At one stage advocate Mrs. Sandhya Sharma had appeared for the respondent. The learned counsel for the appellant states that the respondent was also present on that day. However, advocate Sandhya Sharma has not filed her Vakalatnama. We therefore, directed the learned counsel for the appellant to serve the respondent and to file affidavit of service. Accordingly, the appellant has served the respondent through courier. Affidavit of one Sachin Kudalkar, Junior Advocate has been filed in support of the appellant’s contention that respondent has been served. The said affidavit is taken on record.

6. We notice from the annexures of the said

affidavit that the respondent has accepted the packet containing the papers at her father's house and has signed in token of having received it. In view of this there is no doubt, that the respondent has been served. The respondent has however, not chosen to appear in this court today. Nor has she engaged a lawyer. Hence we pass the following order :

. In view of the fact that the marriage between the appellant and the respondent stands dissolved by a decree of mutual consent under section 10(A) of the Indian Divorce Act, 1869, as per the consent terms filed by the parties in the Family Court at Bandra, Mumbai and in view of the fact that permanent custody of minor child Joanne is granted to the appellant with access to the respondent, impugned orders dated 8/8/05 and 3/12/05 are quashed and set aside.

. Nothing survives in the present Family Court Appeal and the same is disposed of in the aforestated terms.

(SMT. RANJANA DESAI,J.)

(SMT.V.K. TAHILRAMANI, J.)